IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

MACA.No. 1723 of 2005()

OPMV.925/2002 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA
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APPELLANT/PETITIONER:

K.N.SUBASH, S/O.LATE K.K.NARAYANAN NAIR, KEEZHETHU HOUSE, MUDAVOOR P.O., MUVATTUPUZHA.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS - RESPONDENTS
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1. DR.V.LEKHA, D/O.P.PADMANABAN NAIR, VAIZHNAV, CHALAD P.O., PIN-670014.

2. T.M.RAVEENDRAN NAMBIAR, S/O.LATE P.M.BALAKRISHNAN NAMBIAR, VAISHNAVU, CHALAD P.O.-670014.

3. THE NATIONAL INSURANCE CO LTD., DIVISION OFFICE, P.B.NO.40, BANK ROAD, KANNUR.

BY ADV. SRI.P.M.PAREETH
SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 1723 OF 2005

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Dated this the 18th day of September, 2007

J U D G M E N T

Petitioner in O.P(MV) NO. 925 of 2002 on the file of the Motor Accidents Claims Tribunal, Muvattupuzha, is the appellant. Appeal is filed against the award passed by the Tribunal dismissing the petition filed by the appellant claiming compensation against the respondents.

2. Petitioner was travelling in an autorikshaw bearing Reg. No.KL-13/B-421 from Kannur Municipal bus station along Fort road. A car bearing Reg. No.KL-13/F-2575 was proceeding on the same direction. According to the petitioner the driver of the car, in a reckless manner, took a "U" turn, which resulted the accident in which he sustained injuries. Petitioner filed the Original Petition impleading the owner, driver and Insurer of the car alone. Owner, driver and Insurer of the autorikshaw were not impleaded. The Tribunal relying on the report filed by the Assistant Motor Vehicle Inspector held that the accident occurred not due to the negligence of

the driver of the car alone. Since the petitioner did not implead the owner, driver and Insurer of the autorikshaw, the petition was dismissed. Tribunal also found that had the driver in the autorikshaw reduced the speed of the vehicle, the accident would not have happened. Tribunal further found that the accident occurred when the autorikshaw tried to overtake the car.

3. A perusal of the records of the case shows that the findings of the Tribunal are not based on any material on record. Neither petitioner nor respondents gave oral evidence. The Tribunal came to the above conclusions solely relying on the damages sustained to the vehicles alone. Tribunal held that the petitioner had failed to prove that the accident occurred due to the negligence of the driver of the Car. No opportunity was given to petitioner to prove his case. I am of the view that without giving an opportunity to the petitioner to adduce evidence, the Tribunal was not justified in making the above observations. Exhibit A4 is the report of the Assistant Motor Vehicles Inspector regarding the accident. It is reported that the front right mudguard side

dented and the front right wheel disc bent. Exhibit A5 is the report on the inspection of the autorikshaw which shows that front left indicator was broken and body portion dented, rear left body dented and rear left mudguard dented. In the first information statement itself the petitioner had stated that after the collision the autorikshaw capsized and it fell on the side. I am of the view that before coming to a conclusion that the driver of the autorikshaw was also negligent, the Tribunal ought to have given an opportunity to the petitioner to adduce evidence. So the award passed by the Tribunal is unsustainable and it is liable to be set aside.

4. Mr. Rajan P.Kalliath, learned counsel appearing for the Insurance Company, relying on the decision reported in National Ins. Co. Ltd. v. Sivasankara Pillay (1995 (1) KLT 51) has argued that in every claim petition in which more than one vehicle is involved, claimants are required to furnish the registration particulars, names of owners, names of drivers and names of Insurers, etc., of both the vehicles in view of Rule 6 of the Kerala Motor Accidents Claims Tribunals Rules, 1977. That is also a matter to be considered by the

Tribunal.

5. In the result, appeal is allowed. The award passed by the Tribunal is hereby set aside. The matter is remanded for fresh consideration in accordance with law. Tribunal is directed to take O.P(MV) No.925 of 2002 back to file and dispose of the same in accordance with law. Parties shall be given further opportunity to adduce evidence. The Tribunal shall make every endeavour to dispose of the case as early as possible, at any rate, within six months from the date of appearance of the parties before it. It is open to the petitioner to implead the owner, driver and Insurer of the autorikshaw and amend pleadings, if so advised.

The parties shall appear before the Tribunal on 2.11.2007.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 1723 OF 2005

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J U D G M E N T

18TH SEPTEMBER, 2007